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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,718	10/13/2001	Jorma Virtanen	18950-68	2505

7590 07/16/2003

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EXAMINER

MARSCHER, ARDIN H

ART UNIT	PAPER NUMBER
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1631

8

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/976,718

Applicant(s)

VIRTANEN, JORMA

Examiner

Ardin Marschel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 52-90 is/are pending in the application.
- 4a) Of the above claim(s) 56-64, 70, 72, 82-84 and 88-90 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 52-55, 65-69, 71, 73-81 and 85-87 is/are rejected.
- 7) ☒ Claim(s) 1-51 have been canceled. ~~is/are objected to.~~
- 8) ☒ Claim(s) 52-90 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) 3 sheets
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### **DETAILED ACTION**

Applicant's election of Specie B (Assay device and method practice wherein the computer software on the assay disc includes assay interpretive algorithms), Specie F (Assay device and method practice without a cleavable signal element), and Specie H (Assay device and method practice without a metal microsphere signal responsive element therein), in Paper No. 7, filed 5/8/03, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). It is acknowledged that examination to include non-elected species will proceed upon indication of allowability of corresponding elected species. Claims which are now under examination which are directed to subject matter as elected above are listed as claims: 52-55, 65-69, 71, 73-81, and 85-87.

### **PRIOR ART**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 52-55, 65-69, 71, 73-81, and 85-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kellogg et al.(P/N 6,143,248); taken in view of Nelson et al. (P/N 5,251,193).

.Kellogg et al. is directed to the performance of analyses such as biological types wherein fluids are controlled in channels as summarized in the abstract. Figure 4 depicts a rotor for such analyses with various types depicted in Figures 11A – 14 which also describe sectors for separate analyses therein as instantly claimed. The SUMMARY OF THE INVENTION in column 3, line 40, through column 12, line 61, also summarize the invention therein described with various rotor apparatus specifically described. It is noted that an inlet port on the rotor is described as a entry port such as set forth in column 4, lines 8-13, for example, as also instantly claimed. The disks of the reference include compact disk or CD types as described in column 31, line 61, through column 32, line 10, with pits etc. for encoding control information and programming. This programming is reasonably the instantly elected subject matter being assay interpretive algorithms as this is instantly broadly claimed without any specific limitations as to what this may be in the instantly claimed invention. More specifics as to disk contents are described in column 32, lines 11-41. Example 4 of the reference describes optical reading of the disk with a generic light source but does not specifically describe a

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laser source or laser disk reader as instantly claimed. The above citation of CD or compact disk technology is reasonably motivational or suggestive that commonly utilized CD reading technology may be utilized as is well known as being laser usage.

Nelson et al. is cited to further document the usage of a laser light source and laser reader for compact disk reading as set forth in the SUMMARY OF THE INVENTION section in columns 2-3 with compact disks specifically described in column 3, lines 1-7.

Thus, it would have been obvious to someone of ordinary skill in the art at the time of the instant invention to practice the biological analyses on compact disk devices with a laser and programming thereon as instantly claimed because Kellogg et al. describes such an assay device which is read by a light source that is well known for such devices to be a laser with a laser reader as also documented by Nelson et al. thus resulting in the practice of the instant invention.

No claim is allowed.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703)308-4242 or (703)305-3014.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (703)308-3894. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703)308-4028.

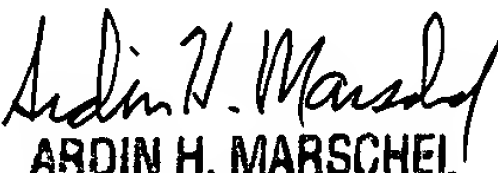
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Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (703)305-3524 or to the Technical Center receptionist whose telephone number is (703) 308-0196.

July 11, 2003

  
ARDIN H. MARSCHEL  
PRIMARY EXAMINER